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# Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 473

HARRY K. AHOYIAN *et al.*,
APPELLANTS,

*v.*

MASSACHUSETTS TURNPIKE AUTHORITY *et al.*,
APPELLEES.

## JURISDICTIONAL STATEMENT

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## JURISDICTIONAL STATEMENT

(A)

On June 4, 1962, a three-judge court of the District of Massachusetts, by unanimous action, delivered the "Opinion of the Court" on the question of dismissing an action brought to declare unconstitutional both a statute of Massachusetts and the exercise of authority under that statute.

A copy of this Opinion is appended in Appendix "A".

(B)

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. s.1253 and s.2101(b). The appeal is from a final decision of a three-judge court dismissing a complaint upon motions to dismiss specifying that the com-

plaint failed to state a cause of action upon which relief can be granted.

(i) This action was instituted under 28 U.S.C. s.1331(a) and s.1343(3) in the form of a class suit brought under Rule 23(a)(1) and (3) of the Federal Rules of Civil Procedure, seeking declarations both that a statute of Massachusetts and that the exercise of authority under that statute was unconstitutional, pursuant to 28 U.S.C. s. 2201 and s. 2202, and seeking preliminary and permanent injunctions restraining the enforcement, operation, or execution of said state statute and restraining the action of any officer of such state in the enforcement or execution of such statute upon the ground of unconstitutionality. A three-judge court was convened for the purpose of hearing and determining this action pursuant to the provisions of 28 U.S.C. s. 2281 and s. 2284.

The complaint (Tr., pp. 1-39, pp. 40-50) alleges that the statute in question, permitting the construction of an express toll highway, and the actual and proposed exercise of authority by state officers under that statute in connection with such construction each constituted a deprivation of the constitutional rights of the plaintiffs.

(ii) On June 4, 1962 the defendants' motions to dismiss (Tr., pp. 51-58) were allowed, and a final judgment was entered in the United States District Court for the District of Massachusetts that the complaint be dismissed. It is this judgment, appended in Appendix "C", which is here sought to be reviewed.

Motions for rehearing, to alter or amend judgment, and to vacate judgment were filed on June 14, 1962. These three motions were denied on June 21, 1962. (Tr., pp. 81-84)

On August 3, 1962 the plaintiffs caused to be entered in the United States District Court for the District of Massachusetts their Notice of Appeal to the Supreme Court of the United States. (Tr., pp. 95-97)

(iii) Jurisdiction of this appeal is conferred on the Supreme Court of the United States by 28 U.S.C. s. 1253 and s.2101(b).

(iv) The jurisdiction of the Court is believed sustained in *Baker* v. *Carr*, 369 U.S. 186, 7 L.Ed.2d 663, 82 S.Ct. 691; *Martin* v. *Creasy*, 360 U.S. 219, 3 L.Ed.2d 1186, 79 S.Ct. 1034; and *Berman* v. *Parker*, 348 U.S. 26, 99 L.Ed. 27, 75 S.Ct. 98.

(v) The state statute in question, herein referred to as the Turnpike Act, is Chapter 354 of the Acts and Resolves of 1952, as amended by Chapter 47 of the Acts and Resolves of 1955, and by Chapter 290 and Chapter 384, ss. 1,2,3, and 4 of the Acts and Resolves of 1958 of the Commonwealth of Massachusetts. It was not enacted as a part of the General Laws of said Commonwealth. It is set out in Massachusetts General Laws Annotated as Appendix to Chapter 81. The said statute, as amended, is set forth in full in Appendix "B" appended.

Also in question is Massachusetts General Laws (Ter. Ed.), c. 79, s. 40, which is incorporated by reference into the Turnpike Act by s.1-5(k) thereof. Said s.40 of Chapter 79 reads as follows:

"Before a taking is made or injury inflicted by a private corporation for which damages may be recovered under this chapter, such corporation shall give to the board of officers by whom such damages are to be awarded security to their satisfaction for the payment of all damages and costs which may be awarded by them or by the court for the land or other property taken or injured; and if, upon petition of the owner and notice to the adverse party, any security taken appears to them to have become insufficient, they shall require the corporation to give further security to their satisfaction. If the corporation fails to comply with this section any person entitled to such damages may treat the taking of his property or the proceedings by which

the right to inflict injury thereon was acquired and any interference by such corporation with the use and enjoyment of his property as unlawful."

(C)

The following questions are presented by this appeal:

1. Whether the district court erred in dismissing the complaint without giving the notice to all members of the class as required by Rule 23(c) of the Federal Rules of Civil Procedure.

2. Whether the district court erred in dismissing the complaint as prematurely brought.

3. Whether the district court erred in dismissing the complaint for lack of jurisdiction.

4. Whether the district court erred in dismissing the complaint for failure of plaintiffs to exhaust an administrative remedy.

5. Whether the district court erred in holding that *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41 required dismissal of the complaint.

6. Whether the district court erred in dismissing the complaint upon motions to dismiss specifying that the complaint failed to state a cause of action upon which relief can be granted.

7. Whether the district court erred in determining or failing to determine that the complaint failed to state a cause of action upon which relief can be granted.

8. Whether the district court erred in appraising or in failing to appraise the sufficiency of the complaint to raise doubts of the unconstitutionality of both the state Act and the exercise of authority by the defendants under said Act, both complained of in the complaint.

9. Whether the district court erred in its appraisal of *Opinion of the Justices*, 330 Mass. 713, 113 N.E. 2d 452.

10. Whether the district court erred in failing to deny the

defendants' motions to dismiss and proceeding to a hearing on the merits.

11. Whether the district court erred in dismissing the complaint without leave to amend.

12. Whether the district court erred in dismissing the complaint without specifying the effect of its dismissal under Rule 41(b) of the Federal Rules of Civil Procedure.

(D)

A concise statement of the case containing the facts material to the consideration of the questions presented is as follows:

The plaintiffs in this action constitute a class of landowners similarly affected by eminent domain land takings made and proposed to be made by a board of public officers known as the Massachusetts Turnpike Authority, one of the defendants. Section 1-3 of the statute (Appendix "B") creating this board describes it as a "body politic and corporate, constitutes it a "public instrumentality", and terms its exercise of power conferred by the statute "the performance of an essential governmental function."

The Supreme Judicial Court of Massachusetts has twice said that the Massachusetts Turnpike Authority is a "public corporation".

The eminent domain taking and the complaint concern the proposed construction under the statute of a limited access toll road approximately ten miles in length and eight lanes wide, connecting the Weston terminus of the presently existing Massachusetts Turnpike, via the City of Newton, with a point within the City of Boston, said toll road being known as the "Boston Extension".

The complaint alleges that the Turnpike Act deprives the plaintiffs of the following federal constitutional rights: (1) the equal protection of the laws guaranteed by the Fourteenth Amendment; (2) the due process guaranteed

by the Fifth Amendment and made applicable to the states through the Fourteenth Amendment; and (3) prohibition of laws impairing contracts provided for by Article 1, Section 10.

The complaint further alleges that the proposed construction of the Boston Extension is an exercise of statutory authority which deprives the plaintiffs of the federal constitutional rights set forth under (2) and (3) of the preceding paragraph.

The complaint also alleges that the proposed construction deprives the plaintiffs of state constitutional guarantees, namely, Part 1, Article 10 and Part 1, Article 11 of the Declaration of Rights and Article LXII, Section 1 of the Articles of Amendment of the Massachusetts Constitution.

The complaint and the amendments to the complaint set out the facts with great particularity. (Tr. pp. 1-50)

The most important facts material to the consideration of the questions presented are summarized as follows:

(1) Massachusetts has two statutes authorizing eminent domain land takings for the purpose of laying out and constructing limited access highways, one the State Highways Act, G.L. (Ter. Ed.), c. 81, s. 5, the other the statute in question, the Turnpike Act, set forth in Appendix "B". These statutes are unequal. The State Highways Act requires the Department of Public Works to hold a hearing, with notice, on the necessity for the taking, to file a highway plan, and involves the Department in "adjudicatory proceedings" under the State Administrative Procedure Act, G.L. (Ter. Ed.), c. 30A, added by St. 1954, s. 681, s.1, which provides well defined rights of judicial review under Section 14 thereof. The Turnpike Act, on the other hand, requires no hearings or any adjudicatory proceedings, does not require the filing of a highway plan, and makes no provision for any judicial review of errors of law, constitu-

tional transgressions, or capricious action; although Section 1-17 of the Turnpike Act provides that the Massachusetts Turnpike "shall become part of the state highway system and shall . . . be . . . operated . . . free of tolls . . ." The only right of the landowner whose land has been taken by eminent domain under the Turnpike Act is to petition for an assessment of damages in the Superior Court. The inequality of the two statutes is complained of as denying the equal protection of the laws and as offensive to principles of due process.

(2) The provisions of the Turnpike Act for adequate compensation for the eminent domain takings are insufficient, in that they do not guard against either substantial risk to the landowner of fair compensation or unreasonable delay in obtaining it.

(3) The Turnpike Act permits arbitrary, unreasonable action on the part of the board of public officers exercising the statutory authority, without adequate standards or adequate procedures for judicial review, and hence is offensive to principles of due process.

(4) The takings for the proposed construction will involve land valued in excess of $43,000,000, and will cause other damage in excess of $50,000,000; whereas the Turnpike Authority has only approximately $25,000,000[1] available for the satisfaction of these liabilities. The Turnpike Act provides for no "earmarking" of funds for damages as to particular landowners, so that all recipients of damages for the takings share in a common fund, either pro-rata or on a first-come-first-paid basis. The provision in the Turnpike Act for the issuance of additional bonds is

[1] An affidavit, not part of the Record in this case, later examined, discloses that a Right of Way Account of $22,750,000 was established for the takings. Upon certification, however, by the Turnpike Authority to the First Nat'l Bank of Boston that this amount is more than sufficient, said bank may transfer excess to the Highway Account for construction costs.

not predicated upon any obligation on anyone's part to purchase them. Hence, both federal and state principles of reasonable compensation in a constitutional sense are violated.

(5) The security for the payment of damages required by Section 1-5(k) of the Turnpike Act itself was not furnished.[1]

(6) The provisions of G.L. (Ter. Ed.), c. 79, s. 40 are not available to the plaintiffs for obtaining security or further security for their damages.

(7) The Turnpike Act permits, and the Turnpike Authority proposes, the use of revenues from the presently existing Massachusetts Turnpike (land already acquired for the Commonwealth) to make payments on bonds issued for the construction of the Boston Extension (land to be acquired for the Commonwealth), in impairment of the Turnpike Authority's prior contracts and unlawfully involving the credit of the Commonwealth for the benefit of private persons.

(8) In addition to making "paper awards" of One Dollar in the case of each taking, offering some owners as little as twenty-five percent of the fair value of their property, failing to inform affected property owners of their full rights under the law, and failing to comply with G.L. (Ter. Ed.), c. 79, s. 8 in the matter of notice, the defendant Turnpike Authority is engaged in an arbitrary, wantonly injurious, capricious, and unreasonable action, affecting adversely the highly urbanized areas of Newton and Boston, in contravention of due process. It is making its takings in a series of progressive, fractionated transactions, with-

[1] An affidavit, not part of the Record in this case, later examined, discloses that a Right of Way Account of $22,750,000 was established for the takings. Upon certification, however, by the Turnpike Authority to the First Nat'l Bank of Boston that this amount is more than sufficient, said bank may transfer excess to the Highway Account for construction costs.

out disclosing any over-all highway plan, which was not even complete at the time of the first Boston Extension takings, so that the full extent of its action will not be known, and the questions of the propriety and constitutionality of its action will not be obvious, until after the matter has been rendered academic or moot in the very building of the toll road extension.

(9) *Opinion of the Justices*, 330 Mass. 713, 113 N.E.2d 452 did not raise or decide, nor did any later Supreme Judicial Court of Massachusetts opinion or decision deal with, any of the federal constitutional questions raised by the present complaint.

(10) There is no state court decision interpreting the applicability, if any, of G.L. (Ter. Ed.), c. 79, s. 40 to the Turnpike Act.

(11) *Opinion of the Justices*, 341 Mass. 738, 167 N.E.2d 745, contains the following language: "Nothing is said as to the applicability of the state administrative procedure act, G.L., c. 30A, or other review of the acts of the authority in applying clearly defined standards."

The three-judge court deferred the issuance of orders to the defendants to show cause why temporary injunctions should not be issued against them, until motions to dismiss by the defendants could be filed and heard.

The motions to dismiss assigned the single ground that the complaint failed to state a cause of action upon which relief could be granted.

The case came on to be heard on said motions and, after consideration, the three-judge court ordered the complaint dismissed. Judgment was entered on June 4, 1962. The order of dismissal was made without reference to Rule 23(c) and without specifying the effect of the dismissal under Rule 41(b) of the Federal Rules of Civil Procedure.

As one consequence, in a state suit subsequently brought on behalf of Hyman Radler, one of the plaintiffs in this

action, against the same defendants, the defendants' plea in bar that the federal district court's judgment of June 4, 1962 was an adjudication on the merits and was *res judicata*, was allowed.

The stated basis of the three-judge court's dismissal of the complaint was that an administrative remedy (Chapter 79, Section 40, *supra*) was available and had to be exhausted, and that the action was, therefore, prematurely brought. Whether the dismissal was also upon grounds of lack of jurisdiction, or exhaustion of state judicial remedy, or abstention is not clear. Statements in the Opinion from which such grounds may be inferred are somewhat elliptical.

If, however, the three-judge court erred in misconceiving the administrative remedy referred to—or in avoiding an appraisal of it in the absence of any state law on the point—as either available, or adequate, or required, to be exhausted in the circumstances of a statute claimed to be unconstitutional, or whether it could be competently or feasibly employed by the plaintiffs for any purpose; then an appraisal of the sufficiency of the complaint was before it in the light of *Newburyport Water Co.* v. *Newburyport*, 193 U.S. 561, 579, 24 S.Ct. 553, 48 L.Ed. 795, 801; *Bell* v. *Hood*, 327 U.S. 678, 682, 66 S.Ct. 773, 90 L.Ed. 939, 943; *Gibbs* v. *Buck*, 307 U.S. 66, 59 S.Ct. 725, 83 L.Ed. 1111; *Hart v. B.F. Keith Vaudeville Exch.* 262 U.S. 271, 274, 43 S.Ct. 540, 67 L.Ed. 977, 979; *Conley* v. *Gibson*, 355 U.S. 41, 46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80; among others.

The judgment of dismissal in the posture of this case is the equivalent of a final order denying, after notice and hearing, a permanent injunction in a civil action required by an Act of Congress (U.S.C. s.2281 and s.2284) to be heard and determined by a district court of three judges, and is appealed from under U.S.C. s. 1253 and s. 2101(b).

(E)

The questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution, for the following reasons:

The case presents substantial allegations of unconstitutionality concerning a state authorized project of great magnitude, which will affect directly thousands of property owners and countless others, such as tenants and business lessees. Time is of the very essence in obtaining a judicial review of these questions, for continued construction of the project, if unlawful, will result in irreparable harm to all parties on both sides of the controversy.

The case also presents an important question of the justiciability of controversies in the federal district courts arising under the Constitution of the United States in matters exceeding the value of $10,000 in the judicial enforcement of the eminent domain power of a state or a political subdivision thereof.

Included among the several questions of federal unconstitutionality is that of taking property without reasonable or just compensation. In the present posture of the case, the plaintiffs are permanently deprived of the right to have these questions resolved by a court of competent jurisdiction property invoked, the determination of which questions necessarily involves the discovery of facts peculiarly within the knowledge of the defendants and a trial at which testimony can be adduced.

Underlying this is a basic question of major importance in all similar legislation on the subject. Did the Massachusetts legislature, merely by reciting what purports on its face to be an administrative remedy, whether of a full or limited nature, ambiguous as to its applicability and with a reservation of applicability specifically written in, without any procedural standards for its use if applicable, and where there has been no judicial decision in any court ap-

praising it availability, scope, or efficacy, by this simple expedient bind the three-judge court in Massachusetts and forestall its inquiry into federal constitutional questions? If the answer to this question is in the affirmative, how easily then has the purpose of Congress that state power not be used as an instrument to circumvent federally protected rights been thwarted.

The question, it is submitted, is whether the three-judge court did not have the plain duty to go behind the legislative recitation purportedly creating an administrative remedy (particularly here, where no state court decision was available on the point, and where the three-judge court itself was troubled by the meaning of the remedy as legislated) to appraise the remedy for itself, before applying a doctrine, the many exceptions to which depended upon just such an appraisal. (See Davis, Administrative Law Treatise, 1958, s. 20.04)

Stated in another way, the question is whether the three-judge court was correct in remitting the plaintiffs to the labyrinth and delay of an unexplored administrative remedy, there to demonstrate the very constitutional infirmities which would induce that court to act.

(F)

The judgment appealed from is set forth in full in Appendix "C" appended.

Respectfully submitted,

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# APPENDIX "A"

OPINION OF THE COURT

June 4, 1962

ALDRICH, *Circuit Judge*. This motion to dismiss an action brought to declare Chapter 354 of Massachusetts Acts of 1952, as amended, hereinafter the Act, to be in violation of the Fifth and Fourteenth Amendments of the United States Constitution does not require extensive discussion. Plaintiffs do not favor us with a reference to the particular statute under which they assert our jurisdiction. All parties, with the exception of a corporation having its principal place of business there, are citizens of Massachusetts. There are 18 named plaintiffs, but the complaint is framed in the nature of a class suit for these plaintiffs and others similarly situated who counsel said in oral argument "are with us in spirit." Defendants claim that 28 U.S.C.A. (1343(3) which, unlike section 1331(a), requires no jurisdictional amount, is inapposite; that this is not an appropriate class action,[1] and that alleging the jurisdictional amount in the plaintiffs as a whole, as it is presently laid, is insufficient. Counsel stated in argument, however, that a number of plaintiffs, if permitted to amend, could each assert this amount. In view of our disposition herein we need not further pursue this matter.

The named plaintiffs are residents of Boston whose land and buildings either have been, or allegedly are about to be, taken by eminent domain as part of the right of way for the Massachusetts Turnpike Boston Extension to be constructed by the Massachusetts Turnpike Authority. The defendants are the Authority, a body corporate created by the Act, Perini Corporation, a general contractor, and the

[1] Defendants' case of *Coffman* v. *City of Wichita*, D.C.D.Kan., 1958, 165 F.Supp. 765, *aff'd* 261 F.2d 112, however, seems readily distinguishable.

First National Bank of Boston, trustee for bondholders who have already loaned the Authority $180,000,000. Many of the provisions of the Act are set forth and fully considered in the light of Article 10 of the Massachusetts Declaration of Rights, as amended, by the Massachusetts court in Opinion of the Justices, 1953, 330 Mass. 713. We are directed to no pertinent differences between the two constitutions.[2]

Plaintiffs contend that the provisions of the Act are a "denial of due process, not taken individually, but taken collectively." We have viewed all matters embraced in this rather unusual position, but will refer only to two. Plaintiffs point to the fact that the Massachusetts State Highways Act, Mass. G.L. c. 81, permits public hearings on the laying out of ordinary highways, whereas the present Act provides none. Apart from equal protection, viz, that this is an unlawful discrimination, plaintiffs do not claim a constitutional right to a public hearing. We see adequate distinguishing circumstances. The general statute, which grants the commission authority to lay out highways, gives no directions of any kind as to any particular one, whereas the present Act, of course, does. There is a difference between a road to be determined by a commission and one designated by the legislature. We do not see any unlawful delegation in permitting the Authority to make the final ministerial selection of the exact path. *Cf. Dreyer* v. *Illinois*, 1902, 187 U.S. 71; *Opinion of the Justices, supra.* Nor

[2] Plaintiffs do say that the Massachusetts case is not authoritative here because the court was passing only upon procedures for taking land in "Westborough, Stockbridge, Northborough, etc." and not in the "highly urbanized areas of Newton and Boston." We are somewhat surprised by this argument, particularly in view of plaintiffs' insistence elsewhere, in discussing equal protection, that no ground exists to distinguish procedures for ordinary highway takings and those for a "full-blown . . . turnpike" (which they gratuitously add will have "an obstructed view of the Prudential Tower."). We think plaintiffs' argument is fallacious.

are plaintiffs without certain rights of review. *Luke* v. *Massachusetts Turnpike Authority*, 1958, 337 Mass. 304.

The only question of possible importance relates to procedures for payment. The Act expressly provides that there shall be no liability in the Commonwealth, but only in the Authority. Section 5(k) of the Act empowers the Authority to acquire land "by the exercise of the power of eminent domain in accordance with the provisions of chapter seventy-nine of the General Laws provided, further, that the Authority shall give security to the state treasurer, in such amount and in such form as may be determined by the state department of public works, for the payment of such damages as may be awarded in accordance with law for such taking, and that the provisions of section forty of said chapter seventy-nine, in so far as applicable, shall govern the rights of the Authority and of any person whose property shall be so taken;"

Chapter 79, §40, provides as follows:

"*Taking by private corporations; security for damages.* Before a taking is made or injury inflicted by a private corporation for which damages may be recovered under this chapter, such corporation shall give to the board of officers by whom such damages are to be awarded security to their satisfaction for the payment of all damages and costs which may be awarded by them or by the court for the land or other property taken or injured; and if, upon petition of the owner and notice to the adverse party, any security taken appears to them to have become insufficient, they shall require the corporation to give further security to their satisfaction. If the corporation fails to comply with this section any person entitled to such damages may treat the taking of his property or the proceedings by which the right to inflict injury thereon was acquired as void

and any interference by such corporation with the use and enjoyment of his property as unlawful."

There is nothing in plaintiffs' argument that since the Authority is a public rather than a private corporation section 40 is not applicable to it. This would mean that the entire reference to that section in the Act is meaningless, a position impossible to take seriously. A more difficult question concerns the meaning of this section. Does the phrase "petition [to] require the corporation to give further security" mean security sufficient for plaintiffs' personal payments, security sufficient for the "class" of plaintiffs represented in this action, whoever they may be, or security sufficient for all takings made and to be made under the Act? Obviously it would do the plaintiffs no good to have security sufficient simply for their own personal purpose unless it were earmarked, for which we find no provision in the statute. On the other hand, on the allegations of the complaint we foresee difficulty in making any reasonable determination of what would be sufficient security for any larger group, limited or unlimited. We asked defendants' counsel during argument for an interpretation of section 40 in this respect, but he did not adequately answer. Instead, defendants point to the fact that $180,000,000 is in the hands of the Authority available to pay condemnation claims and the fact that plaintiffs allege no such total requirement under any circumstances for condemnation payments. The difficulty with this argument is that the Act authorizes the expenditure of this money for any and all costs of construction, and there is no guarantee that, absent a sufficient security deposit, it might not be wholly consumed before payments to plaintiffs were finally made.[3] Defendants' case of *Cherokee Nation* v. *Southern*

[3] Defendants point to the power of the Authority to issue additional bonds. It may be questionable how much weight we can attach to this since there is no obligation upon anyone to purchase them.

*Kansas Ry. Co.*, 1890, 135 U.S. 641, involved an adequate deposit. *Cf. Connecticut River R.R.* v. *County Commissioners*, 1879, 127 Mass. 50.

This question, however, is premature. Before plaintiffs can raise any constitutional issues it is axiomatic that they must exhaust their administrative remedies. *Myers* v. *Bethlehem Shipbuilding Corp.*, 1938, 303 U.S. 41. Plaintiff's first move should have been to seek the relief offered by section 40 itself. *McCarthy* v. *Woburn Housing Authority*, 1960, 341 Mass. 539. If thereafter constitutional infirmities appear in this regard—whether "thereafter" includes seeking relief in the state courts we do not intimate—it will be time enough to consider them.

The complaint is dismissed.

*United States Circuit Judge*

# APPENDIX "B"

## Massachusetts Turnpike

*St. 1952, c. 354, as amended was not enacted as a part of the General Laws, but is set out herein for convenient reference.*

§ 1-1. Turnpike Authority empowered to construct, maintain and repair. The Massachusetts Turnpike Authority (hereinafter created) is hereby authorized and empowered, subject to the provisions of this act, to construct, maintain, repair and operate at such location as may be approved by the state department of public works a toll express highway, to be known as the "Massachusetts Turnpike", from a point in the vicinity of the city of Boston or from a point or points within said city to a point at or near the boundary line between the Commonwealth and the State of New York or such part or parts thereof as it may determine, and to issue turnpike revenue bonds of the Authority, payable solely from revenues, to finance such turnpike. St. 1952, c. 354, § 1, as amended St. 1955, c. 47.

§ 1-2. Credit of Commonwealth Not Pledged. Turnpike revenue bonds issued under the provisions of this act shall not constitute a debt of the commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the commonwealth or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such turnpike revenue bonds shall contain on the face thereof a statement to the effect that neither the commonwealth nor the Authority shall pay the same or the interest thereon except from revenues of the turnpike and that neither the faith and credit nor the taxing power of the commonwealth or of any

political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this act shall be payable solely from funds provided under the authority of this act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this act. St. 1952, c. 354, § 2.

§ 1-3. Massachusetts Turnpike Authority. There is hereby created and placed in the state department of public works a body politic and corporate to be known as the "Massachusetts Turnpike Authority", which shall not be subject to the supervision and regulation of the department of public works or of any other department, commission, board, bureau or agency of the commonwealth, except to the extent and in the manner provided in this act. The Authority is hereby constituted a public instrumentality, and the exercise by the Authority of the powers conferred by this act in the construction, operation and maintenance of the turnpike shall be deemed and held to be the performance of an essential governmental function.

The Massachusetts Turnpike Authority shall consist of three members, to be appointed by the governor, by and with the advice and consent of the council, who shall be residents of the commonwealth, not more than two of whom shall be of the same political party. The members of the Authority first appointed shall continue in office for terms expiring on July first, nineteen hundred and fifty-eight, July first, nineteen hundred and fifty-nine and July first, nineteen hundred and sixty, respectively, the term of each such member to be designated by the governor, and until their respective successors shall be duly appointed and qualified. The governor shall designate one of the members as chairman who shall serve as such during his term

of office. Upon the expiration of the term of office of such chairman, the governor shall appoint one of the members as his successor as chairman. The successor of each member shall be appointed for a term of eight years, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Authority shall be eligible for reappointment. Each member of the Authority before entering upon his duties shall take an oath before the governor to administer the duties of his office faithfully and impartially, and a record of such oaths shall be filed in the office of the secretary of the commonwealth.

The Authority shall elect one of the members as vice chairman thereof and shall also elect a secretary-treasurer who need not be a member of the Authority. Two members of the Authority shall constitute a quorum and the affirmative vote of two members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any turnpike revenue bonds under the provisions of this act, each member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars, and the secretary-treasurer shall execute a surety bond in the penal sum of fifty thousand dollars, each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the commonwealth as surety and to be approved by the attorney general and filed in the office of the secretary of the commonwealth. The chairman of the Authority shall receive an annual salary of twelve thousand dollars and the other members shall each receive an annual salary of ten thousand dollars. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of

his duties. All expenses incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the authority of this act. St. 1952, c. 354, § 3.

14. DEFINITIONS. As used in this act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:—

(a) The word "Authority" shall mean the Massachusetts Turnpike Authority, created by section three of this act, or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this act to the Authority shall be given by law.

(b) The word "turnpike" shall mean the express toll highway or such part or parts thereof as may be constructed under the provisions of this act, together with and including all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, connecting highways, service stations, restaurants and administration, storage and other buildings and facilities which the Authority may deem necessary to the operation of the turnpike, together with all property, rights, statements and interests which may be acquired by the Authority for the construction or the operation of the turnpike.

(c) The term "cost of the turnpike" shall embrace the cost of construction, the cost of the acquisition of all land, rights-of-way, property rights, easements and interests acquired by the Authority for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved,

the cost of all machinery and equipment, financing charges, interest prior to and during construction, and, if deemed advisable by the Authority, for one year after completion of construction, cost of traffic estimates and of engineering and legal expenses, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the turnpike, administrative expenses, and such other expenses as may be necessary or incident to the construction of the turnpike, the financing of such construction and the placing of the turnpike in operation. Any obligation or expenses hereafter incurred by the state department of public works with approval of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering srevices in connection with the construction of the turnpike shall be regarded as a part of the cost of the turnpike and shall be reimbursed to the commonwealth to the credit of the Highway Fund. St. 1952, c. 354, § 4.

§ 1-5. General Grant of Powers. The Authority is hereby authorized and empowered—

(a) To adopt by-laws for the regulation of its affairs and the conduct of its business;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office or offices at such place or places within the commonwealth as it may determine;

(d) To sue and be sued in its own name, plead and be impleaded;

(e) To construct, reconstruct, maintain, repair and operate the turnpike or any part or parts thereof as it may determine, and the provisions of chapter ninety-one of the General Laws shall not apply to the construction by the Authority of structures in, on or over rivers, streams and

waterways; provided, that for drainage areas greater than one thousand acres the said structures shall be designed to pass a rare flood as computed by the Kinnison-Colby formula, and for drainage areas of one thousand acres of less, the said structures shall be designed to meet the requirements of the "Massachusetts Turnpike Drainage Standards" dated June fourth, nineteen hundred and fifty-four.

(f) To acquire sites abutting on the turnpike and to construct or contract for the construction of buildings and appurtenances for gasoline stations, restaurants and other services and to lease the same for the above purposes in such manner and under such terms as it may determine;

(g) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this act;

(h) To fix and revise from time to time and charge and collect tolls for transit over the turnpike, and it shall upon request furnish a user of the turnpike a toll receipt showing the amount of toll paid; the classification of the vehicle and the date and place of exit from said turnpike.

(i) To establish rules and regulations for the use of the turnpike not repugnant to the provisions of the General Laws made applicable thereto by section fifteen, and to provide penalties for the violation of said rules and regulations not exceeding fifty dollars for each offence, which may be recovered by indictment or by complaint before a district court and shall be accounted for and paid to the Authority;

(j) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

(k) To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power

of eminent domain in accordance with the provisions of chapter seventy-nine of the General Laws or any alternative method now or hereafter provided by general law, in so far as such provisions may be applicable, such public lands, parks, playgrounds, reservations, cemeteries, highways or parkways, or parts thereof or rights therein, and any fee simple absolute or any lesser interest in such private property as it may deem necessary for carrying out the provisions of this act, including any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the turnpike; provided, however, that whenever a parcel of private property so taken is used in whole or part for residential purposes, the owner or owners of said parcel may, within thirty days of the date of the Authority's notice to vacate such parcel, appeal to the Authority for a postponement of the date set for vacating, whereupon the Authority shall grant to the owner or owners of the property a postponement of three months from the date of such appeal; provided, however, that the appeal for such postponement shall be in the form of a written request to the Authority sent by registered mail, return receipt requested; and provided, further, that the Authority shall give security to the state treasurer, in such amount and in such form as may be determined by the state department of public works, for the payment of such damages as may be awarded in accordance with law for such taking, and that the provisions of section forty of said chapter seventy-nine, in so far as the same may be applicable, shall govern the rights of the Authority and of any person whose property shall be so taken;

(l) To designate the location, and establish, limit and control such points of ingress to and egress from the turnpike as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance

of the turnpike, and to prohibit entrance to the turnpike from any point or points not so designated;

(m) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(n) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(o) To receive and accept from any federal agency grants for or in aid of the consruction of the turnpike, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and

(p) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act. St. 1952 c. 354, § 5, as amended St. 1955, c. 213; St. 1955, c. 653, § 1; St. 1957, c. 728, § 4.

§ 1-6. State Highways. The Authority may, with the approval of the state department of public works, incorporate in the turnpike any existing state highway or part thereof or any partially completed state highway or any bridge which it may deem necessary for a proper alignment of the turnpike, and the actual cost thereof shall be reimbursed to the commonwealth to the credit of the Highway Fund from the proceeds of its turnpike revenue bonds. St. 1952, c. 354, § 6.

§ 1-7. Incidental Powers

The Authority shall have power to construct grade separation at intersections of the turnpike with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of

such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of the turnpike.

If the Authority shall find it necessary to change the location of any portion of any public highway, it shall reconstruct the same at such location as the Authority shall deem most favorable, with the approval of the state department of public works, and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of the turnpike. In exercising the power herein granted, the Authority may take private property in the name of a city or town by exercise of the power of eminent domain as provided in chapter seventy-nine of the General Laws.

Any public highway affected by the construction of the turnpike may be vacated or relocated by the Authority and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the turnpike.

In addition to the foregoing powers the Authority and its authorized agents and employees may enter upon any lands, waters and premises in the commonwealth for the purpose of making surveys, soundings, drilling and examinations as they may deem necessary or convenient for the purposes of this act, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities.

The Authority shall also have power to make reasonable regulations including the authority to grant easements for the installation, construction, maintenance, repair, renewal,

relocation and removal of tracks, pipes, pipelines, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility, or of any corporation or person owning or operating pipelines in, on, along, over or under the turnpike. Whenever the Authority shall determine that it is necessary that any such facilities which now are, or hereafter may be located in, on, along, over or under the turnpike should be relocated in the turnpike, or should be removed from the turnpike, the public utility, corporation or person owning or operating such facilities shall relocate or remove the same in accordance with the order of Authority. In case of any such relocation or removal of facilities, the public utility, corporation or person owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and condition as it had the right to maintain and operate such facilities in their former location or locations.

The Authority shall have power, in the process of constructing or reconstructing all or any part of the turnpike or any extension thereof or additions thereto, to take by eminent domain pursuant to chapter seventy-nine of the General Laws, such land abutting the turnpike as it may deem necessary or desirable for the purposes of removing or relocating all or any part of the facilities of any public utility, including rail lines, and may thereafter lease the same or convey an easement or any other interest therein to such utility company upon such terms as it, in its sole discretion, may determine. The relocation of the facilities of any public utility, including rail lines, in accordance with the provisions of this section shall be valid upon the filing of the plans thereof with the department of public utilities and no general laws or other special laws, or parts thereof, shall be applicable to such relocation.

The commonwealth hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of the turnpike.

The Authority may sell the buildings or other structures upon any lands taken by it, or may remove the same, and shall sell, if a sale be practicable, or if not, shall lease, if a lease be practicable, any lands or rights or interest in lands or other property taken or purchased for the purposes of this act, whenever the same shall, in the opinion of the Authority, cease to be needed for such purposes. The proceeds of any such sale or lease shall be applied toward the cost of the turnpike or deposited to the credit of the sinking fund for the turnpike revenue bonds issued under the provisions of this act.

The Authority may place and maintain or may grant permission by easement or otherwise to any corporation or person to place and maintain on or under or within the turnpike ducts, pipes, pipelines, wires or other structures, to be so located as not to interfere with the safe and convenient operation for such permission on such terms and conditions as may be fixed by the Authority. The construction, maintenance and repairs of any such ducts, pipes, pipelines, wire or other structures shall be subject to such directions and regulations as the Authority may impose. As amended St. 1958, c. 384, §§ 1-3.

Emergency. Approved June 10, 1958.

§ 1-8. Turnpike Revenue Bonds. The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of the turnpike or any part or parts thereof. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such

payment. The bonds shall be dated, shall bear interest at such rate or rates, not exceeding five per centum per annum, shall mature at such time or times not exceeding forty years from their date or dates, all as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the commonwealth. The bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and shall bear a facsimile of the official seal of the Authority, attested by the secretary-treasurer of the Authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds

in such manner, either at public or at private sale, and for such price, as it may determine to be for the best interests of the Authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds shall be used solely for the payment of the cost of the turnpike, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds initially issued, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this act without obtaining the consent of any department, division, commission, board,

bureau or agency of the commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this act. St. 1952, c. 354, §8.

§ 1-9. Trust Agreement. In the discretion of the Authority the bonds issued under the provisions of this act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth. Such trust agreement or resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage the turnpike or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security

of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike. St. 1952, c. 354, § 9.

§ 1-10. Revenues

The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of the turnpike and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right of way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages and restaurants, or for any other purpose, and to fix the terms, conditions, rents and rates of charges for such use. Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the turnpike as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating the turnpike and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the commonwealth or any political subdivision thereof. The tolls and all other revenues derived from the turnpike, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or

purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. As amended St. 1958, c. 384, § 4.

§ 1-11. Trust Funds. All moneys received pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this act. The resolution authorizing the bonds or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and such resolution or trust agreement may provide. St. 1952, c. 354, § 11.

§ 1-12. Remedies. Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, and the trustee under any trust agreement, except

to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under such trust agreement or resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the Authority or by any officer thereof, including, the fixing, charging and collecting of tolls St. 1952, 354, § 12.

§ 1-13. Exemption From Taxation. The exercise of the powers granted by this act will be in all respects for the benefit of the people of the commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of the turnpike by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay taxes or assessments upon the turnpike or any property acquired or used by the Authority under the provisions acquired or upon the income therefrom, and the bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the commonwealth. St. 1952, c. 354, § 13.

§ 1-14. Bonds Eligible for Investment. Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by section forty of chapter one hundred and seventy-two of the General Laws;

banking associates, investments companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them, and such bonds are hereby made obligations which may properly and legally be made eligible for the investment of savings deposits and the income thereof in the manner provided by clause 15 (c) of section fifty-four of chapter one hundred and sixty-eight of the General Laws. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law. St. 1932, c. 354, § 14.

§ 1-15. Miscellaneous

The turnpike when constructed and open to traffic shall be maintained and kept in good condition and repair by the Authority. The turnpike shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ.

All private property damaged or destroyed in carrying out the powers granted by this act shall be restored or repaired and placed in its original condition as nearly as practicable, or adequate compensation made therefor, out of funds provided under the authority of this act.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the commonwealth, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and

conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the commonwealth may deem reasonable and fair and without the neccessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

Until the turnpike shall have become a part of the state highway system under the provisions of section seventeen of this act, the Authority shall be liable to any person sustaining bodily injury or damage in his property by reason of a defect or want or repair therein or thereupon to the same extent as though the turnpike were a way within the meaning of sections fifteen, eighteen and nineteen of chapter eighty-four of the General Laws, and shall be liable for the death of any person caused by such defect or want of repair to the same extent as is provided in chapter two hundred and twenty-nine of the General Laws. Any notice of such injury, damage or death required by law shall be given to any member of the Authority or to the secretary-treasurer.

Until the turnpike shall have become a part of the state highway system, it shall be deemed to be a way within the meaning and purport of sections two, four A, four B and five of chapter eighty-nine of the General Laws, and sections three A, three B, three C, six, seven, nine, ten, eleven, twelve, thirteen, fourteen, fourteen B, sixteen, the first sentence of section seventeen, section twenty, the first sentence of section twenty-one, sections twenty-three, twenty-four, twenty-six and thirty-four J of chapter ninety of the General Laws.

Any operator of a vehicle using the turnpike who refuses

to pay the toll prescribed by the Authority, or who evades or attempts to evade payment of the toll prescribed by the Authority, may be arrested without a warrant.

Any person damaged in his property by the exercise of any of the powers granted by this act may recover his damages from the Authority under chapter seventy-nine of the General Laws.

On or before the thirtieth day of January in each year the Authority shall make an annual report of its activities for the preceeding calendar year to the governor and to the general court. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants, and the cost thereof may be treated as a part of the cost of construction or operation of the turnpike. Such audits shall be deemed to be public records within the meaning of chapter sixty-six of the General Laws.

Notwithstanding the provisions of chapters one hundred and thirty-four and one hundred and forty-seven of the General Laws, if money, goods or other property which has been abandoned, mislaid or lost on the premises of the Massachusetts Turnpike Authority comes into the possession of said Authority and remains unclaimed in its posession for a period of one hunderd and twenty days, the Authority may sell the same, excepting money so unclaimed, at public auction after notice of such sale has been published for three successive weeks in a newspaper published in the city or town where such sale is to take place. The net proceeds of such sale, after deducting the cost of storage and the expenses of the sale, and all money so unclaimed, shall be paid into and become the property of the Authority. If, in the opinion of the Authority any property so abandoned, mislaid or lost which comes into the posses-

sion of the Authority and remains unclaimed in its possession for a period of one hundred and twenty days, is of the value of three dollars or less, the Authority may donate the same to a charitable organization. As amended St. 1958, c. 200.

Emergency. Approved April 28, 1958.

§ 1-16. Turnpike Revenue Refunding Bonds. The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing any additional portion or portions of the turnpike or improvements, extensions, or enlargements thereof. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this act in so far as the same may be applicable. The issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds St. 1952, c. 354, § 16.

§ 1-17. Transfer to Commonwealth. When all bonds issued under the provisions of this act and the interest thereon shall have been paid of a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, the turnpike, if then in good condition and repair to the satisfaction of the state department of public

works, shall become part of the state highway system and shall thereafter be maintained and operated by said department free of tolls as may be provided by law, and thereupon the Authority shall be disolved and all funds of the Authority not required for the payment of the bonds and of the interest thereon shall be paid into the treasury of the commonwealth for the credit of the Highway Fund and all machinery, equipment, and other property belonging to the Authority shall be vested in the commonwealth and delivered to the state department of public works. St. 1952, c. 354, § 17.

§ 1-18. Preliminary Expenses. To provide for the preliminary expenses of the Authority in carrying out the provisions of this act the sum of five hundred thousand dollars is hereby appropriated from the Highway Fund, which sum shall be paid to the Authority and, simultaneously with the delivery of the bonds, the sum so paid shall be reimbursed by the Authority to the commonwealth for the credit of the Highway Fund out of the proceeds of any bonds which may be issued by the Authority under the provisions of this act.

The Authority is hereby authorized and directed to make such surveys and studies of the turnpike as may be necessary to effect the financing authorized by this act at the earliest practicable time, and for this purpose to employ such consulting engineers, traffic engineers, legal and financial experts and such other employees and agents as it may deem necessary. To effect the purposes of this act the state department of public works shall make available to the Authority all data in the possession of the department which may be useful to the Authority in making such surveys and studies and the department may furnish such assistance in making investigations and in preparing designs for the turnpike project as may be agreed upon be-

tween the department and the Authority, the cost of such surveys and expenses incurred by the department to be paid by the Authority. St. 1952, c. 354, § 18.

§ 1-19. Liberal Construction of Act. This act, being necessary for the welfare of the commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof. St. 1952, c. 354, § 19.

§ 1-20. Constitutional Construction. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. St. 1952, c. 354, § 20.

§ 1-21. Inconsistent Laws Inapplicable. All other general or special laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this act. St. 1952, c. 354, § 21.

## APPENDIX "C"

JUDGMENT

June 4, 1962

This cause came on to be heard upon defendants' motion to dismiss, and after consideration it is hereby ordered that the complaint be dismissed with costs taxed at $

By the Court

(s) Austin W. Jones, Jr.
*Clerk*

Judgment entered June 4, 1962
John A. Canavan, *Clerk*
by Grace V. Flood,
*Deputy Clerk*

(s) Bailey Aldrich
*United States Circuit Judge*

(s) Francis J. W. Ford
*United States District Judge*

(s) Andrew A. Caffrey
*United States District Judge*